



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Intermountain Electric, Inc.

File: B-236953.2

Date: January 31, 1990

DIGEST

Bidder's failure to submit properly and completely executed certification regarding debarment, suspension, proposed debarment and other responsibility matters with bid at bid opening does not affect firm's material obligations under solicitation and therefore does not render bid nonresponsive.

DECISION

Intermountain Electric, Inc., protests the award of a contract to Fischbach and Moore, Inc. under invitation for bids (IFB) No. N62474-87-B-0120, issued by the Department of the Navy for the acquisition of electrical distribution system improvements at the Naval Underwater Weapons Engineering Station at Keyport, Washington. Intermountain argues that the bid of Fischbach and Moore was nonresponsive because it failed to include a completely executed certification regarding debarment, suspension, proposed debarment and other responsibility matters with its bid. We deny the protest.

The IFB contained the standard certification provision appearing at Federal Acquisition Regulation (FAR) § 52.209-5 (FAC 84-51) which requires bidding firms to make various certifications regarding their status as debarred or suspended bidders and regarding possible criminal convictions for a 3 year period.

The contracting officer, who was aware based upon outside knowledge that Fischbach and Moore had been debarred within the 3 year period preceding the date of bid opening, questioned the firm's certification that it had not been debarred for a 3 year period. Because of this, and because the clause set out in the IFB contained a typographical error, the contracting officer wrote to Fischbach and Moore to request further information. Specifically, the contracting

047632/ 140529

officer requested that Fischbach and Moore execute a correctly executed clause and resubmit it. In response, Fischbach and Moore correctly executed the clause but made certain typographical errors in stating the dates of various "plea agreements." In response, the contracting officer requested further information regarding Fischbach and Moore's "plea agreements." In addition, the contracting officer directed a member of her staff to contact cognizant personnel at the General Services Administration and the Department of the Army regarding Fischbach and Moore's status.

In response to the contracting officer's further inquiry, Fischbach and Moore provided corrected information regarding its "plea agreements" and furnished copies of the pertinent documents relating thereto. The Navy learned that, based upon a settlement agreement with the Army, Fischbach and Moore's debarment had been terminated on July 5, 1988, and that since that time, the firm had successfully completed a number of government contracts. On the basis of this information, the contracting officer concluded that Fischbach and Moore was responsible. The contracting officer then made award to Fischbach and Moore and this protest followed.

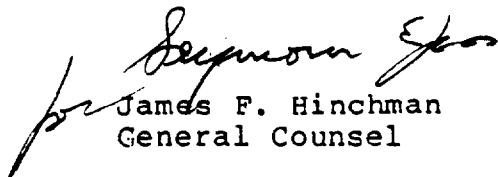
Intermountain argues that because Fischbach and Moore failed to properly complete the certification provisions initially, the firm's bid should have been deemed nonresponsive.

We do not agree that the bid of Fischbach and Moore was nonresponsive. The test for responsiveness is whether the bid as submitted represents an unequivocal offer in all material respects to perform the exact thing called for in the IFB so that, upon acceptance, the firm will be bound to perform in accordance with all of the solicitation's terms and conditions. We have previously held, however, that the failure of a firm to submit standard certifications which concern responsibility do not affect the bidder's material obligations under the IFB and, therefore, may be corrected after bid opening. See All Star Maintenance, Inc., B-231618, Aug. 25, 1988, 88-2 CPD ¶ 181; Gracon Corp., B-224344, July 7, 1986, 86-2 CPD ¶ 41.

Here in fact the certifications are required to assist the contracting officer in determining a bidder's responsibility. See FAR § 9.408 (FAC 84-46). The FAR specifically provides that failure to furnish the certification or such other information required by the contracting officer concerning debarment, etc., may render the bidder nonresponsive. Moreover, FAR § 9.408(b) clearly provides that bidders who do not furnish the certification

or such information as may be requested by the contracting officer must be given an opportunity, as was given here, to remedy the deficiency. The contracting officer requested and received the information concerning the awardee's prior debarment and convictions. The contracting officer also determined from the Army that the debarment had been terminated by settlement and that Fischbach and Moore had successfully completed contracts subsequently. Finally, the contracting officer concluded that Fischbach and Moore's failure to certify correctly was not intentional. Under these circumstances, the contracting officer concluded that Fischbach and Moore was responsible. We have no basis to question the contracting officer's determination.

The protest is denied.


James F. Hinchman
General Counsel